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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,434	06/26/2003	Mark P. Anstadt	034448-007	5213

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EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3766

MAIL DATE	DELIVERY MODE
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08/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/607,434

Applicant(s).

ANSTADT ET AL.

Examiner

Frances P. Oropeza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/17/07 & 2/12/07 Amendments.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 131-150, 153, 155-157, 159-162, 243 and 244 is/are pending in the application.
- 4a) Of the above claim(s) 16, 132, 134-149, 156, 157 and 159 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 131, 133, 150, 153, 155, 243 and 244 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 3/14/07.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Response

1. The Applicant at least amended independent claim 131 in the response filed 5/17/07, hence the rejection of record is withdrawn and a new rejection established in the subsequent paragraphs.

Claim Rejections - 35 USC § 103

2. Claims 131, 133, 150, 153, 155, 243 and 244 are rejected under 35 U.S.C. 103(a) as being unpatentable over Easterbrook et al. (US 6238334) in view of Kung et al. (US 6626821).

Easterbrook et al. disclose a process for assisting the function of a heart, comprising a single continuous cavity of variable volume extending circumferentially completely around the outer wall of the heart (14), and a controller importing the electrocardiogram signal into a pump with an accepted fluid pressure signal for use in an accepted controlling algorithm, accepted to be programmed by the physician (abstract; figure 1, 27; col. 5 @ 16-24; col. 5 @ 52 – col. 6 @ 26; col. 8 @ 13-34; col. 12 @ 56-62; col. 14 @ 50 – col. 15 @ 14).

As discussed in the previous paragraph of this action, Easterbrook et al. disclose the claimed invention except the ventricular assist device using a controller to change volumes within the single continuous cavity of variable volume based on drive fluid flow rate.

Kung et al. flow balancing in a ventricular assist device using a controller to change volumes within the single continuous cavity of variable volume based on drive fluid flow rate for the purpose of varying the ventricular ejection volume. It would have been obvious to one

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having ordinary skill in the art at the time of the invention to have the controller effect changes in the volume within the single continuous cavity of variable volume based on the drive fluid flow rate in the Easterbrook et al. system in order to properly adjust the ventricular ejection volume to establish the right and left ejection pressures appropriate for the patient (col. 3 @ 58-61; col. 5 @ 17-28).

3. Claims 131, 133, 150, 153, 15, 243 and 244 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsitlik et al. (US 5971910) in view of Kung et al. (US 6626821).

Tsitlik et al. disclose a apparatus and method for assisting the function of a heart, comprising a single continuous cavity of variable volume extending circumferentially completely around the outer wall of the heart (36), and a controller importing the electrocardiogram signal into a vacuum pump with an accepted fluid pressure signal for use in an accepted controlling algorithm, accepted to be programmed by the physician (abstract; figure 1; col. 4 @ 47 – col. 5 @ 15; col. 5 @ 44-67; col. 11 @ 22-24).

As discussed in the previous paragraph of this action, Tsitlik et al. disclose the claimed invention except the ventricular assist device using a controller to change volumes within the single continuous cavity of variable volume based on drive fluid flow rate.

Kung et al. flow balancing in a ventricular assist device using a controller to change volumes within the single continuous cavity of variable volume based on drive fluid flow rate for the purpose of varying the ventricular ejection volume. It would have been obvious to one having ordinary skill in the art at the time of the invention to have the controller effect changes in the volume within the single continuous cavity of variable volume based on the drive fluid flow

rate in the Tsitlik et al. system in order to properly adjust the ventricular ejection volume to establish the right and left ejection pressures appropriate for the patient (col. 3 @ 58-61; col. 5 @ 17-28).

Statutory Basis

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If

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attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frances P. Oropeza
Patent Examiner
Art Unit 3766

JPB
8/17/07

Kristen D. Mullen
KRISTEN D. MULLEN
PRIMARY EXAMINER
TECHNOLOGY CENTER 3700